

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2603**

4 (By Delegates Morgan, Stephens, Staggers,
5 Eldridge, Jones, Lynch, Paxton, Hartman,
6 M. Smith, Barrett and Skinner)

7 (Originating in the Committee on the Judiciary)

8 [March 12, 2013]

9
10 A BILL to repeal §48-26-404, §48-26-405, §48-26-601, §48-26-602,
11 §48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006
12 and §48-26-1007 of the Code of West Virginia, 1931, as
13 amended; to amend and reenact §48-26-202, §48-26-203,
14 §48-26-204, §48-26-205, §48-26-206, §48-26-301, §48-26-401,
15 §48-26-402, §48-26-403, §48-26-406, §48-26-603, §48-26-604,
16 §48-26-701, §48-26-1001, §48-26-1002 and §48-26-1004 of said
17 code; and to amend said code by adding thereto nine new
18 sections, designated §48-26-207, §48-26-208, §48-26-209,
19 §48-26-210, §48-26-211, §48-26-212, §48-26-213, §48-26-214 and
20 §48-26-407, all relating to the Family Protection Services
21 Board; revising definitions; adding definitions; revising
22 qualifications for membership on the board; adding two new
23 members to the board; clarifying that the two ex officio
24 members have voting privileges; providing for appointments for
25 unexpired terms; providing appointments for members who become
26 disqualified; clarifying the board's powers and duties;
27 authorizing legislative rules; increasing the percentage of

1 board funds that may be used for administrative functions;
2 authorizing the board to develop formulas to direct funds to
3 certain programs; prohibiting programs from falsely
4 representing that they are licensed; authorizing the board to
5 develop preliminary and full application forms; providing for
6 conditional, provisional and full licenses; authorizing the
7 board to issue licenses for up to three years; updating
8 provisions related to the closure of programs; authorizing the
9 board to issue notices to cease and desist; setting forth
10 procedures for hearings and appeals; clarifying the uses of
11 the Domestic Violence Legal Services Fund; requiring programs
12 to report annually to the board; updating confidentiality
13 protections for programs participants; and including
14 provisions related to monitored parenting and exchange
15 programs.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §48-26-404, §48-26-405, §48-26-601, §48-26-602,
18 §48-26-901, §48-26-902, §48-26-1003, §48-26-1005, §48-26-1006 and
19 §48-26-1007 of the Code of West Virginia, 1931, as amended, be
20 repealed; that §48-26-202, §48-26-203, §48-26-204, §48-26-205,
21 §48-26-206, §48-26-301, §48-26-401, §48-26-402, §48-26-403,
22 §48-26-406, §48-26-603, §48-26-604, §48-26-701, §48-26-1001,
23 §48-26-1002 and §48-26-1004 of said code be amended and reenacted;
24 and that said code be amended by adding thereto nine new sections,
25 designated §48-26-207, §48-26-208, §48-26-209, §48-26-210,
26 §48-26-211, §48-26-212, §48-26-213, §48-26-214 and §48-26-407, all

1 to read as follows:

2 **ARTICLE 26. DOMESTIC VIOLENCE ACT.**

3 PART 2. DEFINITIONS.

4 **§48-26-202. Advocacy defined.**

5 "Advocacy" means assisting victims and survivors of domestic
6 violence, dating violence, sexual assault, stalking or human
7 trafficking, and their children, in securing rights, remedies and
8 services, by directly providing for, or referring to public and
9 private agencies to provide for, safety planning; shelter; housing;
10 legal services; outreach; counseling; case management; information
11 and referral; training; employment; child care; health care;
12 transportation; financial literacy education, financial planning
13 and related economic empowerment services; parenting and other
14 educational services; and other support services.

15 **§48-26-203. Batterer Intervention and Prevention Program defined.**

16 "Batterer intervention and prevention program", previously
17 referred to as a program of intervention for perpetrators, means a
18 licensed educational program that provides classes to individuals
19 who commit acts of domestic violence or abuse, offering nonviolent
20 strategies and values that promote respect and equality in intimate
21 partner relationships.

22 **§48-26-204. Board defined.**

23 "Board" means the Family Protection Services Board created
24 pursuant to Chapter 53 of the Acts of the Legislature of 1989, and
25 subsequently recodified as section three hundred one of this

1 article.

2 **§48-26-205. Closure defined.**

3 "Closure" means the temporary or permanent prohibition of
4 specified services and the corresponding suspension of licensure of
5 a program or program component that violates the standards
6 established by the board or that threatens the health, well being
7 or safety of its program participants or staff.

8 **§48-26-206. Department defined.**

9 "Department" means the Department of Health and Human
10 Resources.

11 **§48-26-207. Domestic Violence Legal Services Fund defined.**

12 "Domestic Violence Legal Services Fund" means the special
13 revenue account established by section six hundred three of this
14 article, for the purposes set forth in that section.

15 **§48-26-208. Domestic violence program defined.**

16 "Domestic violence program" means a licensed program of a
17 locally controlled nonprofit organization, established primarily
18 for the purpose of providing advocacy services, comprising both a
19 shelter component and an outreach component, to victims of domestic
20 violence, dating violence, sexual assault, stalking or human
21 trafficking, and their children: *Provided*, That the board may
22 temporarily or permanently close either the shelter component or
23 the outreach component of a domestic violence program.

24 **§48-26-209. Family Protection Fund defined.**

25 "Family Protection Fund" means the special revenue account

1 established by Chapter 74 of the Acts of the Legislature of 1981,
2 held by the department, for the purpose of collecting marriage
3 license fees pursuant to section six hundred four, article two of
4 this chapter and section ten, article one, chapter fifty-nine of
5 this code, divorce surcharge fees pursuant to section
6 twenty-eight-a, article one, chapter fifty-nine of this code, and
7 fees for failure to present a premarital education course
8 completion certificate pursuant to section ten, article one,
9 chapter fifty-nine of this code, and distributed to licensed
10 domestic violence programs, in accordance with the formula
11 designated by the board.

12 **§48-26-210. Intimate partner defined.**

13 "Intimate partner" means a current or former spouse, a person
14 with whom one shares a child in common, a person with whom one is
15 cohabiting or has cohabited, or a person with whom one is or has
16 been in a relationship of a romantic or intimate nature.

17 **§48-26-211. Licenses defined.**

18 (a) "Conditional license" means a license issued for up to
19 ninety days, to programs that have violations of safety or
20 accountability standards that may threaten the health, well-being
21 or safety of its program participants or staff, or the responsible
22 operation of the program, or that have a history or pattern of
23 noncompliance with established standards.

24 (b) "Provisional license" means a license issued for up to
25 one hundred and eighty days, to programs that are in noncompliance
26 with nonlife threatening safety, programmatic, facility or

1 administrative standards, that may be extended for an additional
2 six months, if the board determines that the program is making
3 active progress toward compliance.

4 (c) "Full license" means a license issued for up to the
5 maximum licensure period of three years, to programs that are in
6 compliance with the standards established by the board and have no
7 violations of safety or accountability standards that may threaten
8 the health, well-being or safety of its program participants or
9 staff, or the responsible operation of the program.

10 **§48-26-212. Monitored parenting and exchange defined.**

11 (a) "Monitored parenting" means the contact between a parent
12 without custodial responsibility, guardian or other adult and one
13 or more children, in the presence of a third person who monitors
14 the contact to promote the safety of the participants.

15 (b) "Monitored exchange" means the observation of movement of
16 a child or children from the custodial responsibility of one parent
17 or guardian to the custodial responsibility of the other parent or
18 other adult without allowing contact between the adults.

19 (c) "Monitored parenting and exchange program" means a
20 licensed program offered by a locally controlled nonprofit
21 organization for purposes of providing a neutral, safe and
22 child-friendly environment to allow the child or children access to
23 a parent or other adult without allowing contact between the
24 adults.

25 **§48-26-213. Outreach defined.**

26 "Outreach" means a licensed domestic violence program's

1 community-based activities to increase awareness and availability
2 of services, in every county within the program's regional service
3 area, to victims and survivors of domestic violence, dating
4 violence, sexual assault, stalking or human trafficking, and their
5 children.

6 **§48-26-214. Shelter defined.**

7 "Shelter" means residential services offered by a licensed
8 domestic violence program on a temporary basis, to persons who are
9 victims of domestic violence, dating violence, sexual assault,
10 stalking or human trafficking, and their children.

11 PART 3. FAMILY PROTECTION SERVICES BOARD.

12 **§48-26-301. Family protection services board continued; terms.**

13 (a) The family protection services board, ~~previously created,~~
14 is continued.

15 (b) Membership of the board is comprised of ~~five~~ seven
16 persons. The Governor, with the advice and consent of the Senate,
17 shall appoint ~~three~~ five members of the board who meet the
18 following qualifications:

19 (1) One appointed member must be a ~~commissioner of a shelter~~
20 director of a licensed domestic violence program, selected from a
21 list nominated by the board;

22 (2) One ~~appointed~~ member must be a ~~member of a major trade~~
23 ~~association that represents shelters across the state~~
24 representative of the West Virginia Coalition Against Domestic
25 Violence, selected from a list nominated by the West Virginia

1 Coalition Against Domestic Violence;

2 (3) One member must be a representative of a batterer
3 intervention and prevention program licensed by the board, selected
4 from a list nominated by the board;

5 (4) One member must be an administrator of the West Virginia
6 Supreme Court of Appeals or his or her designee from the Division
7 of Family Court Services who is familiar with monitored parenting
8 and exchange program services, or a representative of a licensed
9 monitored parenting and exchange program, selected from a list
10 nominated by the board; and

11 ~~(5) The final gubernatorial appointee~~ One member must be a
12 ~~member of the public~~ citizen who is a resident of this state and
13 who is not employed by, under contract with or a volunteer for a
14 program licensed by the board, and who is knowledgeable about
15 services for victims and survivors of domestic violence, selected
16 from a list nominated by the board;

17 ~~(c) The other two members are the~~ secretary of the Department
18 of Health and Human Resources, or his or her designee, and the
19 ~~chairperson~~ chair of the Governor's Committee on Crime, Delinquency
20 and Correction, or his or her designee shall serve as ex officio,
21 voting members.

22 (d) No more than one person who is employed by, under contract
23 with or volunteers for any organization that is licensed to operate
24 any program under the provisions of this article may serve on the
25 board at the same time.

26 ~~(b)~~ (e) The terms of the ~~three~~ five members appointed by the

1 Governor are ~~staggered terms of~~ for three years, staggered in
2 accordance with prior enactments of this act. ~~The initial term of~~
3 ~~the commissioner of the shelter is a one-year term, the initial~~
4 ~~term of the representative of the trade association is a two-year~~
5 ~~term and the initial term of the appointed member of the public is~~
6 ~~a three-year term.~~

7 ~~(c) In the event that a member of the board ceases to be~~
8 ~~qualified for appointment, then his or her appointment terminates.~~

9 ~~(g)~~ (f) If a member resigns or is unable to complete his or
10 her term or ceases to be qualified, the Governor shall appoint
11 within ninety days a person who meets the qualifications of this
12 section to serve the remainder of the unexpired term, from a list
13 nominated by the board.

14 PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

15 **§48-26-401. Powers and duties of board. generally.**

16 ~~It is the duty of the board to:~~

17 (a) The board shall:

18 ~~(1) Regulate its procedural practice;~~ Propose rules for
19 legislative approval, in accordance with the provisions of article
20 three, chapter twenty-nine-a of this code, to implement the
21 provisions of this article and any applicable federal guidelines;

22 (2) Receive and consider applications for ~~the development of~~
23 ~~shelters~~ licensure of domestic violence programs, batterer
24 intervention and prevention programs and monitored parenting and
25 exchange programs;

26 ~~(3) Facilitate the formation and operation of shelters;~~ Assess

1 the need for domestic violence programs, batterer intervention and
2 prevention programs and monitored parenting and exchange programs,
3 including licensure preapplication and application processes;

4 (4) ~~Promulgate rules to implement the provisions of this~~
5 ~~article and any applicable federal guidelines;~~ Conduct licensure
6 renewal reviews of domestic violence programs, batterer
7 intervention and prevention programs and monitored parenting and
8 exchange programs, that will ensure the safety, well-being and
9 health of the programs' participants and staff;

10 (5) ~~Advise the secretary on matters of concern relative to his~~
11 ~~or her responsibilities under this article~~ For each fiscal year,
12 expend from the Family Protection Fund a sum not to exceed fifteen
13 percent for the costs of administering the provisions of this
14 article, and direct the Department of Health and Human Resources to
15 distribute one half of the remaining funds equally and the other
16 half of the remaining funds in accordance with a formula determined
17 by the board, to licensed domestic violence programs;

18 (6) ~~Study issues pertinent to family protection shelters,~~
19 ~~programs for domestic violence victims, and report the results~~
20 Submit an annual report on the status of programs licensed under
21 the provisions of this article to the Governor and the Legislature;

22 (7) Conduct hearings as necessary under this article; and

23 (8) ~~Delegate to the secretary such powers and duties of the~~
24 ~~board as the board may deem appropriate to delegate, including, but~~
25 ~~not limited to, the authority to approve, disapprove, revoke or~~
26 ~~suspend licenses;~~ Collect data about licensed programs for use in

1 an annual report of the board.

2 ~~(9) Deliver funds to shelters within forty five days of the~~
3 ~~approval of a proposal for such shelters;~~

4 ~~(10) Establish a system of peer review which will ensure the~~
5 ~~safety, well-being and health of the clients of all shelters~~
6 ~~operating in the state;~~

7 ~~(11) Evaluate annually each funded shelter to determine its~~
8 ~~compliance with the goals and objectives set out in its original~~
9 ~~application for funding or subsequent revisions;~~

10 ~~(12) To award to shelters, for each fiscal year, ninety-five~~
11 ~~percent of the total funds collected and paid over during the~~
12 ~~fiscal year to the special revenue account established pursuant to~~
13 ~~section 2-604 of this chapter and to expend, during said period a~~
14 ~~sum not in excess of five percent of said funds for cost of~~
15 ~~administering provisions of this article;~~

16 ~~(13) Establish and enforce system of standards for annual~~
17 ~~licensure for all shelters and programs in the state;~~

18 ~~(14) Enforce standards; and~~

19 ~~(15) Review its rules biannually.~~

20 (b) The board may:

21 (1) Advise the Secretary of the Department of Health and
22 Human Resources and the Chair of the Governor's Committee on Crime,
23 Delinquency and Correction on matters of concern relative to their
24 responsibilities under this article;

25 (2) Delegate to the Secretary of the Department of Health and
26 Human Resources such powers and duties of the board as the board

1 considers appropriate to delegate, including, but not limited to,
2 the authority to approve, disapprove, revoke or suspend licenses;

3 (3) Advise administrators of state or federal funds of
4 licensure violations and closures of programs; and

5 (4) Exercise all other powers necessary to implement the
6 provisions of this article.

7 **~~§48-26-402. Duties regarding licenses for shelters and programs~~**

8 **Requirements, qualifications and terms of**

9 **licensure; collaboration to assist programs.**

10 (a) No domestic violence program, batterer intervention and
11 prevention program or monitored parenting and exchange program may
12 represent that it is licensed unless it is licensed by the board
13 pursuant to the provisions of this article and the legislative
14 rules promulgated pursuant to this article.

15 ~~(a)~~ (b) The board shall establish an preliminary application
16 and full application forms for the initial licensing all shelters
17 and programs of domestic violence programs, batterer intervention
18 and prevention programs and monitored parenting and exchange
19 programs.

20 (1) To meet basic eligibility requirements an applicant for
21 licensure must complete a preliminary application form to
22 demonstrate local need for the proposed service, method of
23 governance and accountability, administrative and programmatic
24 design, and fiscal efficiency. The board shall respond in writing
25 within sixty days of receipt of the preliminary application;

1 (2) If the board approves the preliminary application, the
2 applicant may complete a full application form;

3 (3) The board shall determine whether all documentation set
4 forth on the licensure checklist has been submitted, and may
5 request supplemental or clarifying information or documentation;
6 and

7 (4) The board shall grant or deny a license within sixty days
8 of the receipt of the completed full application form and all
9 supplemental or clarifying information or documentation requested
10 by the board.

11 ~~(b) (c) Licenses may be granted or renewed on an annual basis~~
12 ~~with all such licenses having a term of one year for periods not to~~
13 ~~exceed three years: commencing on the first day of July and~~
14 ~~terminating on the thirtieth day of June of the next year Provided,~~
15 ~~That the board may conduct licensure reviews at any time during the~~
16 ~~licensure period, and may downgrade, suspend or revoke a license in~~
17 ~~accordance with the provisions of this article.~~

18 ~~(c) The board shall grant or deny any license within~~
19 ~~forty five days of the receipt of the application.~~

20 (d) The license granted by the board shall be ~~conspicuously~~
21 prominently displayed by the licensees.

22 (e) The board may grant a provisional license ~~or grant a~~
23 ~~waiver of licensure if the board deems such waiver or provisional~~
24 ~~license necessary for the shelter or program. All such waivers or~~
25 ~~provisional licenses shall be reviewed semi-annually. for up to one~~
26 ~~hundred and eighty days, to a program that is noncompliant with~~

1 non-life threatening safety, programmatic, facility or
2 administrative standards. A provisional license may be extended
3 for up to an additional one hundred and eighty days, if the board,
4 in its sole discretion, determines that the program is making
5 active progress toward compliance.

6 (f) The board may grant a conditional license for up to ninety
7 days to a program that has violations of safety or accountability
8 standards that may threaten the health, well-being or safety of its
9 participants or staff, or the responsible operation of the program,
10 or that have a history or pattern of noncompliance with established
11 standards. If a program does not correct the violations within the
12 conditional license period, the board may institute closure
13 proceedings.

14 (g) The Department of Health and Human Resources, the Division
15 of Justice and Community Services, the Family Protection Services
16 Board, the WV Coalition Against Domestic Violence, the West
17 Virginia Supreme Court of Appeals and the Division of Corrections
18 may, collectively or in any combination as appropriate to the
19 program, collaborate to provide technical assistance to prevent and
20 resolve deficiencies in a program's ability to meet the standards
21 to operate and maintain licensure.

22 (h) If the board obtains information that a person or persons
23 has engaged in, is engaging in or is about to engage in an act that
24 constitutes or will constitute a violation of the provisions of
25 this article or the legislative rules promulgated pursuant to this
26 article, it may issue a notice to the person or persons to cease

1 and desist the act, or apply to the circuit court for an order
2 enjoining the act. Upon a showing that the person has engaged, is
3 engaging or is about to engage in such an act, the court may order
4 an injunction, restraining order or other order as the court
5 considers appropriate.

6 **§48-26-403. ~~Duties regarding~~ Legislative rules.**

7 (a) The board shall propose rules for legislative approval in
8 accordance with the provisions of article three, chapter
9 twenty-nine-a of this code to effectuate the provisions of this
10 article.

11 (b) The rules shall include, at a minimum:

12 (1) Operating procedures of the board;

13 (2) Minimum standards, including, but not limited to,
14 governance, administration, safety, referral process, intake,
15 services, financial accountability, staffing, personnel policies,
16 communication, program participant records, service plans,
17 confidentiality, program evaluation, facility requirements,
18 reports, restrictions, and other requirements in this article, for
19 licensure of:

20 (A) Domestic violence programs, including requirements for
21 both shelter and outreach components;

22 (B) Community-based, local government and Division of
23 Corrections batterer intervention and prevention programs; and

24 (C) Monitored parenting and exchange programs; and

25 (3) A licensure checklist to determine the adequacy of
26 applicants and licensees to meet licensure standards, to determine

1 eligibility for a full license, provisional license, conditional
2 license or no license.

3 (c) The rules in effect as of the effective date of the
4 reenactment of this section will remain in effect until modified,
5 amended or repealed provided that they are not inconsistent with
6 this article.

7 **§48-26-406. Closure of ~~shelters; provisional licensee waivers~~**
8 **programs.**

9 (a) The board may close any ~~shelter which~~ program that
10 violates the standards established under this article ~~and which or~~
11 that threatens the health, well-being ~~and or~~ safety of its ~~clients~~
12 participants or staff: Provided, That if a shelter is closed, the
13 governing body of the program, in conjunction with the board, shall
14 establish a plan to place ~~such clients~~ the participants in other
15 shelters or alternative housing. ~~and to develop a method to~~
16 ~~continue serving the areas served by the shelter to be closed.~~

17 ~~(b) The board may place a shelter, which violates standards~~
18 ~~established under this article and which threatens the health, well~~
19 ~~being and safety of its clients, under receivership and operate~~
20 ~~said shelter. The board shall have access and may use all assets~~
21 ~~of the shelter.~~

22 ~~(c) (b) In order to close or place a shelter in receivership~~
23 domestic violence program or one of its components, a batterer
24 intervention and prevention program or a monitored parenting and
25 exchange program, the board ~~shall hold a public hearing within the~~
26 ~~confines of municipality or county in which the shelter is located.~~

1 ~~The board, by September 1, 1989, shall establish rules and~~
2 ~~regulations to govern the conduct of such hearings: *Provided*, That~~
3 ~~four members of the board must vote unanimously in the affirmative.~~
4 ~~before a shelter is closed or placed in receivership.~~

5 ~~(d) (c) If a either the shelter disagrees with the findings of~~
6 ~~the board, the shelter may appeal such ruling to the circuit court~~
7 ~~of Kanawha County or the circuit court of the county where the~~
8 ~~shelter is located pursuant to the provisions of section four,~~
9 ~~article five, chapter twenty-nine-a of this code component or the~~
10 ~~outreach component of a domestic violence program is closed, the~~
11 ~~remaining component of the program may continue to be licensed and~~
12 ~~to receive funds.~~

13 **§48-26-407. Hearing procedures; judicial review.**

14 (a) When a license for a program is downgraded or discontinued
15 through permanent or temporary closure and the governing body of
16 the program believes that the downgrade or discontinuation is in
17 violation of this article or the legislative rules promulgated
18 pursuant to this article, the program's governing body is entitled
19 to a hearing before the board.

20 (b) Hearings shall be held in accordance with the provisions
21 of article five, chapter twenty-nine-a of this code.

22 (c) The board may conduct the hearing or elect to have a
23 hearing examiner or an administrative law judge conduct the
24 hearing. If the hearing is conducted by a hearing examiner or an
25 administrative law judge:

26 (1) The hearing examiner or administrative law judge shall be

1 licensed to practice law in this state and shall conform to the
2 Code of Conduct for Administrative Law Judges as set forth by the
3 Ethics Commission in legislative rule;

4 (2) At the conclusion of a hearing, the hearing examiner or
5 administrative law judge shall prepare a proposed written order
6 containing recommended findings of fact and conclusions of law and
7 may include recommended sanctions, including closure, if the board
8 so directs;

9 (3) The board may accept, reject, modify or amend the
10 recommendations of the hearing examiner or administrative law
11 judge; and

12 (4) If the board rejects, modifies or amends the
13 recommendations, the board shall state in the order a reasoned,
14 articulate justification based on the record for the rejection,
15 modification or amendment.

16 (d) Pursuant to the provisions of section one, article five,
17 chapter twenty-nine-a of this code, informal disposition may also
18 be made by the board by stipulation, agreed settlement, consent
19 order or default. Further, the board may suspend its decision and
20 place a license on conditional or provisional status.

21 (e) A licensee adversely affected by a decision of the board
22 entered after a hearing may seek an appeal to the Circuit Court, in
23 accordance with the provisions of section four, article five,
24 chapter twenty-nine-a of this code, and may appeal a decision of
25 the Circuit Court to the West Virginia Supreme Court of Appeals, in
26 accordance with the provisions of article six, chapter

1 twenty-nine-a of this code.

2 **§48-26-603. Domestic Violence Legal Services Fund.**

3 (a) There is ~~hereby established~~ continued in the State
4 Treasury a special revenue account, designated as the "Domestic
5 Violence Legal Services Fund," ~~which that~~ shall be an appropriated
6 fund for receipt of grants, gifts, fees, or federal or state funds
7 designated for legal services for domestic violence victims.
8 Expenditures from the fund shall be limited to attorneys employed
9 or contracted by licensed domestic violence shelters programs, or
10 employed or contracted by nonprofit agencies West Virginia's
11 federally designated legal services program, its successor
12 organization or other nonprofit organization as determined by the
13 department, which that establish a collaborative relationship with
14 a licensed domestic violence shelter program, that to provide civil
15 legal services to victims of domestic violence.

16 (b) Any court of this state may order a nonprevailing party to
17 pay an amount equivalent to the reasonable attorney's fee to which
18 the prevailing litigant would be entitled into the Domestic
19 Violence Legal Services Fund, established in subsection (a) of this
20 section, if the following circumstances occur:

21 (1) A prevailing litigant is entitled by statute or common law
22 to a reasonable attorney's fee, and

23 (2) The prevailing litigant's legal counsel informs the court
24 that no fee will be requested.

25 **§48-26-604. Annual reports of ~~shelters and licensed~~ programs.**
26 **~~receiving funds.~~**

1 ~~A shelter or program receiving funds pursuant to this article~~
2 ~~shall file an annual report with the board by the thirty first day~~
3 ~~of each October for the prior fiscal year. The report shall include~~
4 ~~statistics on the number of persons served, the relationship of the~~
5 ~~victim to the abuser, services provided to the abuser, the number~~
6 ~~of referrals made for medical, psychological, financial,~~
7 ~~educational, vocational, child care or legal services and the~~
8 ~~results of an independent audit. No information contained in the~~
9 ~~report may identify any person served by the shelter or enable any~~
10 ~~person to determine the identity of any such person.~~

11 (a) All programs licensed pursuant to this article shall
12 report specific information annually as required by the board.

13 (b) No information contained in a report may identify any
14 person served by the program or enable any person to determine the
15 identity of any such person.

16 PART 7. CONFIDENTIALITY.

17 **§48-26-701. Confidentiality.**

18 (a) No program ~~or shelter receiving funds~~ licensed pursuant to
19 this article ~~shall~~ may disclose, reveal or release or be compelled
20 to disclose, reveal or release, any written records or personal or
21 personally identifying information about a program participant
22 created or maintained in providing services, regardless of whether
23 the information has been encoded, encrypted, hashed, or otherwise
24 protected, pursuant to this article except:

25 (1) Upon ~~written~~ consent of the person seeking or who has

1 sought services from the program; ~~or the shelter~~

2 (2) In any proceeding brought under sections four and five,
3 article six, chapter nine of this code or article six, chapter
4 forty-nine of this code;

5 (3) As mandated by article six-a, chapter forty-nine and
6 article six, chapter nine of this code;

7 (4) Pursuant to an order of any court based upon a finding
8 that said information is sufficiently relevant to a proceeding
9 before the court to outweigh the importance of maintaining the
10 confidentiality established by this section;

11 (5) To protect against a clear and substantial danger of
12 imminent injury by a ~~client~~ person receiving services to himself or
13 herself or another; or

14 (6) ~~For treatment or internal review purposes to the staff of~~
15 ~~any program or shelter if the client is also being cared for by~~
16 ~~other health professionals in the program or shelter. As~~
17 authorized by the releases signed by batterer intervention and
18 prevention program participants pursuant to the provisions of
19 subsection (b) of this section.

20 (b) Batterer intervention and prevention program participants
21 shall authorize the release of information by signing the following
22 releases:

23 (1) Allowing the provider to inform the victim or alleged
24 victim and the victim's advocates that the batterer is
25 participating in a batterer intervention and prevention program
26 with the provider and to provide information to the victim or

1 alleged victim and her or his advocates, if necessary, for the
2 victim's or alleged victim's safety;

3 (2) Allowing prior and current service providers to provide
4 information about the batterer to the provider;

5 (3) Allowing the provider, for good cause, to provide
6 information about the batterer to relevant legal entities,
7 including courts, parole officers, probation officers, child
8 protective services, adult protective services, law enforcement,
9 licensed domestic violence programs, or other referral agencies;

10 (4) Allowing the provider to report to the court, if the
11 participation was court ordered, and to the victim or alleged
12 victim, if she or he requests and provides a method of notification
13 and to his or her advocate, any assault, failure to comply with
14 program requirements, failure to attend the program, threat of harm
15 by the batterer, reason for termination and recommendations for
16 changes in the court order; and

17 (5) Allowing the provider to report to the victim or alleged
18 victim, or his or her advocate, without the participant's
19 authorization, all perceived threats of harm, the participant's
20 failure to attend and reason for termination.

21 (c) Monitored parenting and exchange programs may disclose to
22 one parent or guardian, without the permission of the other parent
23 or guardian, any perceived threat of harm or violation of the court
24 order or violation of the monitored parenting and exchange program
25 rules by the other parent or guardian.

26 (d) No monitored parenting and exchange program may release

1 information about the child without consent of the custodial parent
2 or guardian.

3 (e) In addition to the provisions set forth in this section,
4 the release of a victim's personally identifying information is
5 subject to the provisions of 42 U.S.C. § 13925(b)(2).

6 ~~(b)~~ (f) No consent or authorization for the transmission or
7 disclosure of confidential information ~~shall be~~ is effective
8 unless it is ~~in writing and~~ signed by the ~~client~~ program
9 participant whose information is being disclosed. Every person
10 signing an authorization shall be given a copy.

11 (g) In no circumstances may a victim of domestic violence,
12 dating violence, sexual assault, or stalking be required to provide
13 a consent to release his or her personally identifying information
14 as a condition of eligibility for the services, nor may any
15 personally-identifying information be shared in order to comply
16 with federal or state reporting, evaluation, or data collection
17 requirements: Provided, That: Nothing in this section prohibits a
18 program from reporting suspected abuse or neglect, as defined by
19 law and where specifically mandated by the state.

20 PART 10. ~~CHILDREN'S CENTERS FOR THE MONITORING OF CUSTODIAL~~
21 ~~RESPONSIBILITY~~ MONITORED PARENTING AND EXCHANGE PROGRAMS.

22 **§48-26-1001. Legislative findings. Court orders; use of**
23 **monitored parenting and exchange programs without**
24 **court order.**

25 ~~The Legislature finds that increasing numbers of children are~~

1 ~~living with one parent and that many of these children have been~~
2 ~~exposed to violence in the home. The Legislature further finds that~~
3 ~~it is sometimes in the best interests of children that the exercise~~
4 ~~of custodial responsibility, including the exchange of children, be~~
5 ~~monitored in order to observe and record the exercise of custodial~~
6 ~~responsibility and to discourage or prevent inappropriate conduct.~~
7 ~~For these reasons, the Legislature declares that a program be~~
8 ~~implemented to foster safe and neutral centers to monitor custodial~~
9 ~~responsibility, including the exchange of children, through the~~
10 ~~certification of children's centers for the monitoring of custodial~~
11 ~~responsibility.~~

12 (a) Judges and magistrates may order persons to apply to a
13 licensed monitored parenting and exchange program for monitored
14 parenting or monitored exchange of children: *Provided*, That a
15 licensed monitored parenting and exchange program may not be
16 required to perform duties that are beyond the program's capacity
17 or scope of services.

18 (b) Judges and magistrates may require a person to pay a
19 reasonable amount based on ability to pay and other relevant
20 criteria for any fee charged by a monitored parenting and exchange
21 program.

22 (c) Licensed monitored parenting and exchange programs may
23 receive referrals from judges, magistrates, child protective
24 services, attorneys and other agencies, for services under the
25 terms and conditions of those services as set forth in rules
26 promulgated by the board.

1 (d) Licensed monitored parenting and exchange programs may
2 serve self-referrals when the adult parties agree to the use of the
3 program.

4 **§48-26-1002. Exclusions.**

5 The provisions of this part do not apply to therapeutic or
6 supervised visitation or exchanges or any activity conducted by the
7 state or others in abuse and neglect proceedings pursuant to
8 articles six and six-a, chapter forty-nine of this code in which
9 assessment, evaluation, formulation of a treatment plan, case
10 management, counseling, therapy or similar activities occur.

11 **§48-26-1004. Contract by persons using center program.**

12 Every ~~center~~ program shall require that the ~~parents~~ parent,
13 guardian or other ~~caretakers~~ adult sign a written contract prior to
14 using the ~~center~~ program and that the use of the services provided
15 by the ~~center~~ program can be terminated by the ~~center~~ program for
16 violation of the contract.